

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUANE RICHARD FISHER,

Defendant.

No. 18-CR-2053 CJW

**ORDER REGARDING
MAGISTRATE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On September 13, 2018, a one-count Indictment was filed against defendant. On October 9, 2018, defendant appeared before United States Magistrate Judge Mark Roberts and entered a plea of guilty to count one of the Indictment. On October 10, 2018, Judge Roberts filed a Report and Recommendation in which he recommended that defendant's guilty plea be accepted. No objections to Judge Roberts' Report and Recommendation were filed. The Court, therefore, undertakes the necessary review of Judge Roberts' recommendation to accept defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this Court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1)(C). Where no objection has been made to a magistrate's report and recommendation, the Court reviews the magistrate's report and recommendation for clear error. 28 U.S.C. § 636(b)(1)(A). Similarly, Federal Rule of Criminal

Procedure 59(b) provides for review of a magistrate judge's report and recommendation on dispositive motions, where objections are made, as follows:

The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

FED. R. CRIM. P. 59(b)(3).¹

In this case, no objections have been filed, and it appears to the Court upon review of Judge Roberts' findings and conclusions that the findings and conclusions are not clearly erroneous. Therefore, the Court **ACCEPTS** Judge Roberts' Report and Recommendation of October 10, 2018, and **ACCEPTS** defendant's plea of guilty in this case to count one of the Indictment.

IT IS SO ORDERED this 25th day of October, 2018.



C.J. Williams
United States District Judge
Northern District of Iowa

¹ *United States v. Cortez-Hernandez*, 673 F. App'x 587, 590-91 (8th Cir. 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed.